36TH CONGRESS, 2d Session. } SENATE. { REP. COM. No. 311.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1861.—Ordered to be printed.

Mr. PEARCE submitted the following

REPORT.

(To accompany joint resolution S. 64.)

The Committee on Finance, to whom was referred the petition of Pierce & Bacon, and also the joint resolution of the 28th February for their relief, report:

That the claim of the petitioners was submitted to their consideration so late in the session that it has been impossible to make such an examination of all the facts and the law applicable to them, as the amount claimed and the importance of the principles involved require.

The petitioners appear to be the *bona fide* holders of sundry bills of exchange amounting in all to $260,000, drawn by Russell, Majors, & Waddell, upon the late Secretary of War, (Mr. Floyd,) and accepted by him as Secretary. These bills were drawn payable to the order of the drawers at the Bank of the Republic, in New York, and were indorsed by Russell, Majors & Waddell, for whom they were discounted by the petitioners. So far as they have matured, none of these bills have been paid to the holders.

The committee present the form of one of these bills:

"$20,000. WASHINGTON, *November* 26, 1859.

"Ten months after date pay to our own order, for value received, at the Bank of the Republic, in New York city, twenty thousand dollars, and charge to account of our contract for supplies for the Amy in Utah.

"RUSSELL, MAJORS & WADDELL.

"Hon. JOHN B. FLOYD,
"*Secretary of War.*

"Indorsed: Russell, Majors & Waddell."

[Indorsed across the face.]

"WAR DEPARTMENT, *November* 26, 1859.

"Accepted.

"JOHN B. FLOYD,
"*Secretary of War.*"

The committee have not had time to investigate thoroughly the legal authority of the Secretary of War to bind the government by such acceptances, nor the liability of the United States under all the circumstances. But the decisions of the Supreme Court in cases which, at present, seem to be exactly like the one before the committee, were favorable to the claims of the holders of such acceptances.

In the United States *vs.* Bank of the Metropolis, 15 Peters's Report, 377, the claim of the bank was on several bills of exchange, of one of which the following is a copy:

[United States *vs.* Bank of Metropolis.]

"$4,500. WASHINGTON CITY, *October* 17, 1835.

"SIR: Ninety days after date please pay to my own order four thousand five hundred dollars, for value received, and charge to my account, for transporting the mail.

"Respectfully yours,

"JAMES REESIDE.

"Hon. AMOS KENDALL,
"*Postmaster General.*

"Accepted, on condition that his contracts be complied with.

"AMOS KENDALL."

The Bank of the Metropolis discounted these bills. They were not paid at maturity, and the amount was retained by the bank out of certain moneys which it had on deposit to the credit of the United States. Being sued by the government, the bank pleaded a set-off, and exhibited these bills. The court sustained the right of the bank to do so. The case was carried to the Supreme Court. From the decision the committee give the following extracts:

"When the United States, by its authorized officer, become a party to negotiable paper, they have all the rights and incur all the responsibility of individuals who are parties to such instruments. We know of no difference, except that the United States cannot be sued. But if the United States sue, and a defendant holds its negotiable paper, the amount of it may be claimed as a credit, if, after being presented, it has been disallowed by the accounting officers of the Treasury; and if the liability of the United States upon it be not discharged by some of those causes which discharge a party to commercial paper, it should be allowed by a jury as a credit against the debt claimed by the United States.

"This is the privilege of a defendant for all equitable credits given by the act of March 3, 1797. (1 Story, 464.) This, and the liability of the United States, in the manner it has been stated, has been repeatedly declared, in effect, by this court. It said, in the case of the United States *vs.* Dunn, (6 Peters, 51,) "the liability of parties to a bill of exchange, or promissory note, has been fixed on certain principles which are essential to the credit and circulation of such paper. These principles originated in the convenience of commercial transactions, and cannot now be departed from." From the daily and unavoidable use of commercial paper by the United States, they are as

much interested as the community at large can be, in maintaining these principles.

"It does not matter how the drawer's account stood; whether he was a debtor or a creditor of the department; whether the bank knew one or the other. An unconditional acceptance was tendered to it for discount. It was not its duty to inquire how the account stood, or for what purpose the acceptance was made. All it had to look to was the genuineness of the acceptance, and the authority of the officer to give it.

"The rule is, that a want of consideration between the drawer and acceptor is no defense against the right of a third party who has given a consideration for the bill, and this even though the acceptor has been defrauded by the drawer, if that be not known by such third party before he gives value for it."

These extracts seem to sustain the claim of the petitioners. But the committee have ascertained that the present Secretary of War holds that the acceptances of Mr. Floyd were not valid and binding on the government of the United States; and as they have only an *ex parte* view of the case, they think it proper that the Senate ascertain officially all the facts, and obtain the opinion of the law officer of the government, before acting finally on a claim of such large amount, and involving principles of such great importance to the Treasury of the United States.

They therefore ask to be discharged from the further consideration of the petition and joint resolution, and they recommend the adoption of the accompanying resolution:

Resolved, That the petition of Pierce & Bacon be referred to the Attorney General, and that he be requested to inquire into the facts and the law of the case and report his opinion to the Senate at its next session.